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The Employees of the Senate Chamber of the Dominion.

Translated from "La Minerve."

I.

The spirit of Clause 130, in the Act of Confederation, intituled "The British North America Act, 1867."

The 1st of July last saw the establishment of a new order of things in Canada.

The general principle involved in a change of this nature is, that all offices and employments dependent on the regime that has been abolished were at an end; or, to speak more plainly, the result of the above cited Act is, that a whole class may at once be cast out upon the street, if it is the pleasure of the new Authorities to order an immediate evacuation of their offices.

There are countries where faction demands this clean sweeping out of places as the reward of the victors, and where they maintain that "in rooting up the tree it is necessary to clear away the branches," and this mode of proceeding may at first sight be deemed logical, but reflection will soon make apparent certain consequences that may well disconcert us.

Most of the unfortunates thus suddenly deprived of all income have perhaps families dependent upon them, but *n'importe*, strike them all down, husband, wife and children, at one blow.

Of what crime have these poor people been guilty, that they should have drawn down on their heads such a calamity? None. The fathers were simply good, honest and irreproachable employés, working conscientiously and doing honor to themselves and to their occupation. Then why cast them out?

That which may be pronounced as absolutely logical can not always be put into practice: for example, the cruel law which demanded "an eye for an eye," though perhaps founded on some subtle theory, is not Christian, and has therefore been abolished by *Christians*.

In Canada it is certain that a general clearing out of the employés before the 1st of July, 1867, would have been impossible; not that there would have been any lack of aspirants for the vacated places, but the execration that such injustice would have given rise to would have been too formidable.

Our object, however, is not to examine here the principle that the fall of a regime necessarily involves the termination of all offices established under it. The question we are about to discuss here is quite different.

The new Act of Union contains an express exception to the inhuman principle mentioned above, as we may read in clause 130, to wit:—

"Until the Parliament of Canada otherwise provides, *all officers of the several Provinces*, having duties to discharge in relation to matters other than those coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces, *shall be officers of Canada*, and shall continue to discharge the duties of their respective offices under the same liabilities, responsibilities and penalties as if the Union had not been made."

There can be no doubt that the spirit of this clause was intended to pervade the whole service, and was designed to regulate all its functional operations in its passage to the new regime. It preserved at once both public and private interests. It continued the Civil

Service, and maintained the employés of the abolished regime in possession of their charges without interruption, until some competent authority should have made other dispositions; and though the holding of their offices is plainly susceptible of revocation, should necessity require it, still it is equally evident that the new regime found a *personnel* in the Bureaux, who were there by the authority of the above cited Act.

Why was clause 130 passed at all? Can there be any doubt that, among other things, its object was to prevent the old officer from being despoiled of the merit and of the right which he had acquired by his zeal, his labor and his experience.

Take away this clause and all his years of service are lost to him. The new regime would then find itself beset with new men, and in reconstructing the offices, unworthy preferences would exclude true merit, which is incapable of descending to a certain species of solicitation. According to the Act all this is avoided, provision is therein made for the continuation of the old employés in their offices and emoluments, and if any were excluded from this right for any other reason than that of unworthiness, justice would surely demand that they should be properly indemnified for their past services, even though those services should not have been rendered to the present Authorities but to their predecessors.

Besides it is only just that in return for the advantages that the new regime experienced at its *debut* from the possession of a corps of experienced functionaries, some respect should be shown by it to the past, and some disposition be manifested to satisfy the natural obligations incurred by the old order of things.

We beg to offer some grave facts in support of this interpretation.

A general opinion has prevailed, and we may add, and was encouraged by persons high in authority, that there would be no spoliation of offices, that the revolution being a pacific one would be consequently a beneficent one. It was assuredly never the intention of its authors that it should be the forerunner of misery and woe to any class, and upon that opinion the ever anxious employé rested his hopes.

Now if this opinion was erroneous, should not the Ministry, who have the execution of the laws, have warned the employé that his office was liable to suppression in principle at least, and that he held it merely on sufferance?

In that case he might have made an effort to avail himself of the opportunity afforded by the organization of the Departments of the Local Governments, where many of the old functionaries were called upon to fill offices, owing to their experience in public business; but the silence of the executive, and the spirit of clause 130, had completely reassured them and led them to trust in the security of that lot upon which the subsistence of their families depended.

These facts prove that the employés had up to the 1st of July last lost none of their rights, and that they had really become officers of the Dominion, and it follows from this, that the Federal Authorities could not be under any misapprehension as to the obligation they were under of indemnifying for past services the holders of all offices that might be dispensed with in the process of reorganizing the Departments.

II.

Some of the Reasons why it is just to indemnify those who may be deprived of their Employment.

It is only justice that the State, in displacing one of its servants, should indemnify him, either by according him a certain sum of money, if he is still young, or by pensioning him if he is old or infirm.

The right to a retiring pension, or to an indemnity when the services of a public officer are dispensed with, and for no fault on his part, is a principle that has been consecrated in France, ever since the 14th century, and also in England since the Revolution of 1698.

A permanent office or a salary once acquired is a sort of personal property which should not be taken away without indemnifying the person dispossessed, these obligations are founded in justice and good faith.

It has been held that the best course to pursue in the suppression or diminution of offices is to wait till they become vacant, and the illustrious Burke expressed himself upon

this subject in the following generous sense:—"Both wisdom and justice were opposed to the principle of dispoiling office holders of the emoluments they enjoyed, every reform of this kind should be made prospective and not retrospective, and that it could not be necessary, in accomplishing economical reforms, to place the ephemeral life of man in comparison with the enduring life of a nation, or to commit an act of rigor and injustice towards individuals in order to attain a little sooner the object that Parliament had in view."

Fox shared this sentiment, and went even further, declaring that a public office once acquired became "a freehold."

Such were the just and generous opinions expressed by these two great men, and in a speech delivered by Lord John Russell, in 1836, that statesman cited them as *par excellence*, "the principles of Burke and Fox."

On several occasions in England, and more than once also in Canada, the Legislature have not hesitated to recognize as legitimate the rights of the officer to a permanent possession of his office.

We limit ourselves to two examples. During the Session of 1864, the Contingent Committee of the old Legislative Council presented a Report, having for its object a reform of the staff and salaries of the employés of that Chamber. In this Report the Committee expressed an opinion that with some few exceptions the salaries of the officers were too high; that there were offices which might be united into one, and others that might be altogether dispensed with. They proposed to abolish the office of Librarian after the demise of the present venerable occupant of that office; they thought also that the offices of Black Rod and Sergeant-at-Arms could be performed by one person whenever the opportunity occurred of accomplishing that change without injury to any private interest.

The reduction of salaries proposed by the Committee was large, and extended to every office except the French Translators who were omitted in consequence of the speciality of their functions. But when did they propose to effect these economies? Only, said the Committee, in a spirit of justice and dignity worthy of them, whenever vacancies occurred and new appointments had to be made. The Council adopted this recommendation.*

In 1849, the House of Lords, in England, had acted on the same principle. The Reform which was sanctioned by their Lordships consisted partly in the suppression of offices, and partly in the reduction of certain high fees that existed; but in order to avoid "disappointment and injustice," their Lordships decided that these reforms should not be put into operation until vacancies occurred by the death or promotion of the then office holders.—See Lords' Journals, 1st August, 1849.

Doubtless our Contingent Committee of the Legislative Council followed this precedent, and they were right in doing so. Perhaps, in a few cases, the salaries of the officers of the Legislative Council did exceed the proper maximum, but we are of opinion that these salaries would be found upon enquiry to have been increased on and justmotives.

III:

Lamentable Decision of the Senate.

We come now to a consideration of the lamentable decision arrived at by the Senate. It is much to be regretted that on entering into the full enjoyment of their high functions they should have exhibited such an utter obliviousness of those obligations which we have shown to be based on law and equity.

Were the employés of our former Legislative Council excluded from all benefit of clause 130? Assuredly not. Why should any exception be made in their respect?

The 1st of July found them at their desks in the offices of the Senate. Ought they to have abandoned them? or could they be regarded as intruders?

The Act answers for them, it recognized and adopted them as "officers of Canada." Justice demanded that they should be subjected to no change.

"Officers of Canada," says the Act. What does that mean? The appellation is general and necessarily presupposes another. What other could be applied to them

* See Journals of Legislative Council (1864), 14th and 23rd of June.

unless that of employés of the Senate? But if not employés of the Senate, what were they? Honorary officers of Canada? That would indeed be a curious denomination.

The public voice had proclaimed that every officer should be continued in his office, its rights and duties. To this the Executive gave a silent assent, or rather we should say, by one particular act it spoke in its turn, for the employés having become officers of the Dominion, and there being as yet no special credit in existence, the Executive issued an order for their payment out of the Federal Funds.

Some months after—to wit—on the 6th of November, the opening of the Parliament of Canada took place, when all these officers continued to perform their duties as authorized officers. Such was the state of affairs on the 25th of November, when the Hon. B. Seymour laid before the Senate a Report of the Contingent Committee, stating that the Committee did not recognize any employés as belonging to the Senate at the opening of the Session, except those that had been appointed by the Crown, viz.:—The Clerk, the Chaplain and the Usher of the Black Rod. This Report was accepted by the House on the following day.

We believe that the Committee though acting conscientiously had entirely misapprehended clause 130.

They admitted, as may be seen in the report of the debates, that the said clause preserved the rights of certain officers, but not those belonging to the employés of the old Council.

Can it then be possible that we have among us any privileged classes? Does favoritism enter into the spirit of clause 130?

This conflict of opinions reminds us of the assertion of one of the most subtle lawyers of modern times, who said that he had never yet seen an Act of Parliament through which he could not have driven a coach and six. But we have shown that clause 130 really extends its favors to all—without exception—and the *retrospective decision* that we are now attacking supports this interpretation, or at least it acknowledges a doubt, for where was the use of a written declaration if the Committee felt certain that those that they were disowning had no right to claim any thing of them?

Nobody will contest that the Senate possessed the *power*, under the Imperial Act, of removing the employés from their offices, but had they the power to declare that those gentlemen that they found in charge of the Bureaux of the Senate had never been its officers? and could they without just cause deprive them at once of all that merit that they had earned as useful servants, and of all those claims to consideration which is naturally implied in the title of old employés? That is the real question.

Certainly the Senate could claim no right to act unjustly, and yet after some little hesitation the Senate voted the Report, as we have said before, thus declaring on the faith of its Committee, that saving those functionaries nominated by the Crown, it had not, and never had had, any other employés—an arbitrary decision and doubly unjust—unjust inasmuch as it ignored the spirit of clause 130, and unjust again because it violated all natural obligations.

And what were the results?

The Senate would have nothing to do with the employés of the old Council.

They would leave the moral obligations of that body unfulfilled.

It was true that the employés possessed rights founded in equity and good faith; but the Senate would not honor the engagements of its authors, as they say in the language of jurisprudence, and as these latter are constitutionally dead and cannot recognize those rights, it follows that the rights are annihilated.

Surely that is not justice.

IV.

Consequences of the Decision of the 26th November.

On the 11th of December, fifteen days after that decision, so much to be regretted, its promoters framed another report to give effect to the first, and this Second Report assumed the form of a long decree of spoliation; on being presented to the House it excited a spontaneous cry from Senators, who pronounced it "inhuman," while a portion of the press declared it to be iniquitous; but we must confess that it did not surprise us, for was it not a logical sequence to the decision of the 26th of November?

The Senate had ignored clause 130, and consequently it was necessary that "*the branches should be cleared away with the trunk.*" As to the Contingent Committee they no longer experienced any restraint on the score of private interests, for they had adopted as a principle, that the Senate *had no employés.*

The ground once cleared to our satisfaction of all obstructions, nothing is more tempting than the desire to rebuild, and so the work proceeded.

To re-establish the personnel of the Bureaux the Committee proposed, in the first place, to take on all the old clerks and messengers, with the exception of sixteen, declaring that it was expedient to secure the services of persons who were already *au fait* in their several functions. For as far as their experience is concerned they are found good, but as to their rights they are good for nothing.

They are of opinion that those they thus select for employment may form an efficient staff, but that is no reason that they should be properly treated. Their salaries are to be much below the amount fixed upon by the Committee of 1864, but that Committee contemplated no reduction until the demise of those who then held the offices.

We have already said there existed no salaries that had been raised without some just cause.

It should be noted that in Canada the Government provides no pension for old or infirm employés, or for their widows, and it is therefore reasonable that the salaries of officers should be higher there, than in those countries where that beneficent practice prevails.

In Canada the employé must lay by some small savings; there are few of them, however, who can accomplish this, for the cost of living at the capital is always dear. Doubtless an economical reform of the departments is to be desired; but surely any attempt to effect this should be based on just and wise principles like those we have shown to be laid down by Burke and Fox, for the guidance of the Government of England. The economists lay down a principle from their own point of view. They say that in fixing the amount of a salary it is necessary to consider the skill of the workman, the value and importance of his labour, and the cost of living in the place where he is located. Such especially was the opinion of Richard Cobden.

Another economist, Monsieur Le Pelletier de la Serthe, says, "That to attempt to fix permanently the salaries of workmen, whatever might be their activity, their intelligence, or their skill in the profession which they exercise for all times, places, and circumstances, independently of the dearness of living, the anxieties attending it, &c., would be extremely unjust, if not impossible."

The Contingent Committee of the Senate do not view things in this light. The pruning knife makes the same havoc with the reasonable and moderate salaries as with the highest. Most of these salaries are the reward of many years' service, but the Committee is heedless of that, it has nothing to do with the past, and considers that the abrogation of the Union Act of 1841 has made a *tabula rasa.*

These honest persons are in their eyes only new comers, and they treat them accordingly. Certainly the report tends to work a strange revolution; it levels all conditions; for instance, the clerk of the French Journals is to have only $900 per annum, that is to say a $100 more than the postmaster of the Senate, and $100 more than the housekeeper, though more strictly speaking he would have $100 less than the latter functionary, for the house-keeper, besides his eight hundred dollars, has house rent, fuel and light. The clerk of the English Journals, as well as the second French translator, is to have $1,000 a year, and the senior French translator $1,100.

In the House of Commons the house-keeper receives $1,150 with house-rent, fuel and light.

Truly the Committee have an odd notion of "the value and importance of labour."

So much as to salaries, now a word as to titles: Out of the thirteen employés destined by the Committee to form the staff of the officers of the Senate, seven of them are to be without any distinctive title. Now out of these seven, four of them held titles under the old regime, and will consequently be despoiled of that which they doubtless valued very highly. The title of official distinction is an object of much ambition with the employé; it gives him a certain consideration. Besides every honorable and intelligent man is desirous of bearing a certain share of responsibility; it is only the

imprudent and careless who regard it as a burden. Take away a man's distinctive title and you take from him his responsibility, and with it his zeal, his courage, and his desire to distinguish himself. He is no longer any thing but a kind of machine, intelligent, perhaps, but irresponsible and humiliated.

The public interest requires that the employé should enjoy the title of the office, the duties of which he is called upon to discharge. This is the practice that prevails in France. In England the more common practice is to substitute distinctive classes for titles. In the House of Lords for example the employés, under the general designation of clerks, are divided into three classes, and these are again divided into degrees. A man may arrive by seniority at the head of his class; but superior merit alone can raise him to another class, and this is a real and encouraging distinction.

The Committee of the Senate qualifies only three or four officials with titles, in addition to those functionaries who are nominated by the Crown. All the others are to come under the general denomination of clerks; though among them are to be found, under the general name of clerks, two French translators, and the two clerks of Journals. Up to this point the Committee have only been unjust. We now proceed to show where it has been "*inhuman.*"

Strictly speaking it might have dispensed with all the old employés. It does not go so far as that. It has only dispensed with sixteen.

Several among these could count twenty, thirty, and thirty-five years of service. How would soldiers be treated who could show such terms of service? The Committee, however, does not see that they have any cause for complaint. Perhaps because they are too old they reject them. Who is to recompense them for their past services?

That is quite another affair, for since the decision of the 26th of November it is impossible that the Senate can do it. Perhaps the local Governments will, but that is uncertain.

If the Dominion pensioned them, it would recognize that they also were entitled to the benefit of clause 130; now the Committee have decided against that. One thing is certain, and that is, that they are in danger of coming to want. Seeing the urgency of the case, the Committee resolved to be generous. It could not admit that they had any claim to indemnity, but out of pure liberality it accorded them a year's salary.

"The *Globe*," however, does not admire that. "If the report errs at all," says he, "it is in the direction of being too liberal to the employés, who are to lose their places." Thus then, 16 persons are to be dismissed without any other resource than a small gratuity. Injustice here gives birth to injustice. Old employés, reckoning more than a quarter of a century's service, are to receive only a year's salary, like those who had newly entered the service.

Among those who are laid aside is one whose fate inspires strange feelings. He is the grandson of one of the victims of that odious proscription of 1755, that dark and bloody page in the Acadian Annals! His forefather was of the parish of la Grande Prée. "Sad coincidence! Scarcely had the representatives of the old Acadian land assembled in the Federal Parliament, than the descendant of one of the proscribed is in his turn hunted out of an employment where he has rendered such useful services."*

Among the rejected are three or four sexagenarians. At such an age is it not late to enter upon a new career?

Ah, gentlemen of the Committee, old men who are demanding the dismissal of old men, to save a fraction of a farthing per head to the nation, what courage you have!!

V.

The Motives of the Committee.

It now remains to us to examine the principal motives of the conduct of the Committee.

Some of the members who compose it are what they call "Radical in matters of Economy." They desire to reduce the expenses at any cost. *At any cost*, there is the

* Hon. M. Letellier de St. Just, 12th December.

evil. All sensible men must desire to see an end of lavish expenses. But why so much anxiety about small matters, when so many great abuses exist to occupy their attention? It seems puerile conduct to be occupying themselves with despoiling a handful of faithful servants when they might choose out of undertakings involving millions. Many persons, believing themselves good citizens too, complain of such doubtful economy and think it as necessary to be economical in the practice of injustice as well as in the public Revenue.

In England a few years ago when they created a new Divorce and Probate Court, it was felt to be consistent with the public interest as well as with the public honesty, that the State should indemnify all those who were deprived of their employment by the abolition of that ancient ecclesiastical tribunal. And that indemnity amounted to the enormous sum of £116,000 per annum, as may be seen in the recent work of Mr. Alpheus Todd, "*On Parliamentary Government in England.*" An excellent example of the respect due to the rights of private interest. The saving proposed by the Contingent Committee of our Senate does not exceed $13,000. One of the Senators, the Honorable Mr. Anderson, calculated that this economy would not lower the tax one-third of a cent per head to the tax payers of the whole Dominion. Is it worth while to commit so much injustice for so small a profit?

Two other members of the Committee had other objects in view. Everybody knows that New Brunswick and Nova Scotia claim the right of placing a certain number of employés in the Senate. But a question arose whether they ought to exercise that right now or defer it till some vacancies occur. At the instigation of some of the members the Committee immediately created some vacancies that it placed at the disposal of the Senators from the Maritime Provinces. But several of those representatives expressed themselves as averse to dispossessing men who had received the assurance that they held their employment for life. Such were the generous sentiments expressed by the venerable Mr. Holmes, as well as by Messrs. Miller, Weir, &c. The coveted offices in question amounted only to four, and to obtain the disposal of these four places some of the Senators became the principal promoters of the sad decision of the 26th of November. They urged that their right to the disposal of these offices was incontestable, and they claimed to exercise it much as they regretted its *interference with the moral rights of the old Servants.* Justice could not be done to these without an act of injustice being practised upon others. We would here remind those members who paid so little deference to *moral rights*, that to obtain an object incomparably more grave, the present constitution consecrates similar rights in favor of New Brunswick and Nova Scotia, to the prejudice, so to speak, of Upper and Lower Canada. We refer them to clause 147 of the "Act of British North America, 1867."

This article predetermines the changes that the accession of Prince Edward Island to the Federation would occasion. The three Maritime Provinces, grouped together, having a right in principle only to twenty-four members, the same as in each of the other two divisions, Upper and Lower Canada, Nova Scotia was to have ten Senators, New Brunswick ten Senators, and Prince Edward Island four. Now the two first named Provinces who, as yet, form by themselves the third division, possess, at present, each twelve members. If Prince Edward Island should join the Union would it not follow that a sixth of said Senators ought to lose their titles? But those who drew up the Act judged rightly, that it would be unjust to take from four persons a dignity which had been bestowed upon them for life. Modifying the principle, they decided that in according four members to Prince Edward Island, on her entrance into the Union, they would displace no body, only the respective representation of New Brunswick and Nova Scotia shall be reduced from twelve to ten members, *as vacancies occur.*

When Upper and Lower Canada, out of respect to the rights of possession, thus consent that the sister Provinces shall enjoy four seats in the Province more than them; it seems to us that it would be but courteous and loyal on the part of the Maritime Provinces to recognize the force of this principle in respect to our old employés.

VI.

Conclusion.

We have now finished our examination of a question which though it concerns imme-

diately only a few persons, is of real importance in its relation to grave principles. And if we have gone into details it was with the object of inducing a public body not to proceed with an act of injustice, which is no small matter.

Fortunately the Senate has not yet sanctioned the Report of its last Committee, but adjourned the consideration of it to the 16th of March. We have reason to believe that it will hesitate to adopt a proceeding so faulty in principle, so miserably parsimonious, and so ill becoming its dignity. A great majority of the Senators do not desire to displace any body, but a number of the Senators from Ontario are of a different opinion.

It is to be regretted that men who formed a part of the former Legislative Council should, in the new Senate, be so oblivious to the moral responsibilities that belong to them as the representatives of the old order of things. It ill becomes them to be unmindful of certain obligations, especially when they consider how the Queen has acted by them in similar matters. Their chief title to the high dignity which She has conferred upon them is in short the same "*acquired right*" that they dispute to their former old employés.*

To sum up briefly, the Senate, for all the reasons that we have indicated, ought in justice to confirm the old employés in their offices and salaries, or, if it comes to the conclusion that it is its duty to displace some, it should indemnify them or even pension them. And if it is necessary to accomplish that—to revoke its first decision—then why not revoke it?

"I felt it was unjust" said the Honorable Mr. Miller, at the sitting of The House on the 12th of December last, "and I foresaw the consequences. To-day I think myself no longer bound by that decision though I did not oppose it when it passed."

Other good words were spoken on that occasion, we give them below, and certainly nothing finer could fall from the mouth of an honest man.

Mr. Seymour and some others having reproached Mr. Letellier de St. Just with resisting the execution of a reform which had been approved by him three years before :—

"It is true, replied he, that I voted for the report of 1864, but that was on condition that it should only take effect in the future—that is to say—on the demise of the present Office Holders, but if you will maintain that I have been inconsistent, be it so! I prefer to be thought illogical rather than inhuman."

And here, Gentlemen, is the true solution of the question: it is better to be illogical than inhuman.

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* Hon. Mr. Currie—I would ask why, in the first selection, the choice of the Crown is restricted to the members of this Chamber, when probably others out of it could be found whose presence here would be of more advantage to the public?

Hon. Sir E. P. Taché—I do not know what advantage would be derived if the Crown had the right of making selections from all over the country. If that had been proposed, *I think many honorable gentlemen would have found fault with it.* (Hear, hear.) It was due to courtesey that the members of this House should not be overlooked, and not only that, but *there were acquired rights which had tobe respected.—Debates on Confederation of B. N. A. Provinces*, 1865.